

## 37 Am. Jur. 2d Fraud and Deceit § 85

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### Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

#### IV. False Representations

##### C. Matters of Futurity; Promises and Statements of Intention

##### 1. In General; Statements as to Events in Future

### § 85. General rule against liability—Illustrative applications

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

#### A.L.R. Library

[False representations as to income, profits, or productivity of property as fraud, 27 A.L.R.2d 14](#)

The general rule that statements about the future which turn out to be false do not give rise to liability for fraud<sup>1</sup> generally applies in sales of real<sup>2</sup> or personal<sup>3</sup> property and in trades or exchanges.<sup>4</sup> Illustrations of the rule are found in decisions holding that fraud cannot be based upon representations concerning the future value, profitability,<sup>5</sup> or prospects<sup>6</sup> of a business, such as representations of future insolvency;<sup>7</sup> representations of the capacity of a corporation to produce product in the future;<sup>8</sup> or representations as to future prospects of gain,<sup>9</sup> such as a prediction that corporate stock will triple in value within a year<sup>10</sup> or six months;<sup>11</sup> or predictions as to how mining claims will turn out in the matter of yield.<sup>12</sup> It has been said in this regard that forward-looking opinions about investment prospects or future sales performance generally cannot be the basis for a fraud claim.<sup>13</sup> Also within the class of representations of futurity that will not result in liability are:

- assurances of the outcome or result of litigation<sup>14</sup>
- statements or representations that a series of law books, to be published at stated intervals, will be continued so long as another publishing company continues to publish certain of its books<sup>15</sup>
- representations that it will take a certain time for a sales agency to “clean up” its present orders<sup>16</sup>
- an assurance by an owner of a tract of land, when selling lots thereon restricted to residential purposes, that the whole tract will be so restricted<sup>17</sup>

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#### Footnotes

1            §§ 84, 85.

2            *Ayers v. Southern Pac. R. Co.*, 173 Cal. 74, 159 P. 144 (1916); *Jobe v. Akowchek*, 259 A.D.2d 735, 687 N.Y.S.2d 417 (2d Dep't 1999).

3            *Kennedy v. Flo-Tronics, Inc.*, 274 Minn. 327, 143 N.W.2d 827 (1966) (corporate stock); *American Law Book Co. v. Fulwiler*, 219 S.W. 881 (Tex. Civ. App. El Paso 1920).

4            *Nelson v. Van Schaack & Co.*, 87 Colo. 199, 286 P. 865 (1930); *Brinkley v. Arnold*, 98 Fla. 166, 123 So. 569 (1929).

5            *Boulden v. Stilwell*, 100 Md. 543, 60 A. 609 (1905); *Haney v. Parkison*, 72 Or. 249, 143 P. 926 (1914); *Patterson v. Bushong*, 196 S.W. 962 (Tex. Civ. App. Fort Worth 1917), writ refused, (June 5, 1918).  
As to statements credit, solvency, and financial standing, generally, see §§ 184 to 193.

6            *McCormick v. Jackson*, 209 N.C. 359, 183 S.E. 369 (1936); *Patterson v. Bushong*, 196 S.W. 962 (Tex. Civ. App. Fort Worth 1917), writ refused, (June 5, 1918); *Bushnell v. Elkins*, 34 Wyo. 495, 245 P. 304, 51 A.L.R. 13 (1926).

7            *Boulden v. Stilwell*, 100 Md. 543, 60 A. 609 (1905); *Patterson v. Bushong*, 196 S.W. 962 (Tex. Civ. App. Fort Worth 1917), writ refused, (June 5, 1918).  
As to statements regarding credit, solvency, and financial standing, generally, see §§ 184 to 193.

8            *Evans v. Gray*, 215 So. 2d 40 (Fla. 3d DCA 1968).

9            *Williamson v. Holt*, 147 N.C. 515, 61 S.E. 384 (1908); *Patterson v. Bushong*, 196 S.W. 962 (Tex. Civ. App. Fort Worth 1917), writ refused, (June 5, 1918).

10           *Kennedy v. Flo-Tronics, Inc.*, 274 Minn. 327, 143 N.W.2d 827 (1966).

11           *Sparks v. State*, 256 So. 2d 537 (Fla. 4th DCA 1972), writ discharged, 273 So. 2d 74 (Fla. 1973).

12           *Burwash v. Ballou*, 230 Ill. 34, 82 N.E. 355 (1907).

13           *Flegles, Inc. v. TruServ Corp.*, 289 S.W.3d 544 (Ky. 2009).

14           *Bailey v. Diamond Intern. Corp.*, 47 A.D.2d 363, 367 N.Y.S.2d 107 (3d Dep't 1975).

15           *Bigelow v. Barnes*, 121 Minn. 148, 140 N.W. 1032 (1913).

16           *Lowther v. Hays*, 225 S.W.2d 708 (Mo. 1950).

17           *Sprague v. Kimball*, 213 Mass. 380, 100 N.E. 622 (1913).